

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

DUDLEY CENEUS,

Plaintiff,

- versus -

SANFORD TALKIN, Attorney at Law, and
IVAN A. VOGEL,

Defendants.

ORDER

12-CV-2737

JOHN GLEESON, United States District Judge:

Plaintiff, Dudley Ceneus, currently incarcerated at Gouverneur Correctional Facility, brings this *pro se* complaint pursuant to 42 U.S.C. § 1983 against his former criminal defense attorneys. Ceneus requests to proceed *in forma pauperis* (“IFP”), and I grant that request solely for the purpose of this Order. For the reasons discussed herein, I dismiss the Complaint.

BACKGROUND

According to the Complaint, Ceneus was represented by Sanford Talkin and Ivan Vogel in a criminal matter. Compl. at 4. In the course of their representation of Ceneus, Talkin and Vogel “filed only three pieces of boiler plate documents upon the court . . . [and] Talkin took all of [Ceneus’s] money.” *Id.* As a result of defendants’ poor legal representation of him, Ceneus lost his money, housing, business, and cat. *Id.* Ceneus contends that Talkin and Vogel deprived him of effective assistance of counsel, in violation of the Sixth Amendment, for which he seeks \$750,000 in damages. Compl. at 4-5. He also asks the Court to bar Talkin and Vogel from practicing law. Compl. at 5.

DISCUSSION

A. *Standard of Review*

In reviewing the Complaint, I am mindful that Ceneus is proceeding *pro se* and that his pleadings should be liberally construed and held “to less stringent standards than formal pleadings drafted by lawyers.” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (internal quotation marks omitted); accord *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). Nevertheless, I am required to dismiss *sua sponte* an IFP action if I determine it “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

B. *Analysis*

Because the Complaint fails to state a claim upon which relief may be granted, I am required to dismiss it. A § 1983 action is properly brought only against a person acting under color of state law. 42 U.S.C. § 1983; *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). Defense attorneys, including public defenders, do not act under color of state law when “performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *Rodriguez v. Weprin*, 116 F.3d 62, 65-66 (2d Cir. 1997). Accordingly, Ceneus’s § 1983 claims against his defense attorneys are hereby dismissed.¹

CONCLUSION

For the reasons discussed herein, the Complaint is dismissed. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore IFP status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

¹ Insofar as Ceneus seeks to bring a legal malpractice claim rather than or in addition to his § 1983 claim, the Court lacks original subject matter jurisdiction to hear any such claim and declines to exercise supplemental jurisdiction to hear it. See 28 U.S.C. §§ 1331, 1332, 1367(c)(3).

So ordered.

John Gleeson, U.S.D.J.

Dated: July 10, 2012
Brooklyn, New York